

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

Civil Action No. 1:24-cv-03583-VMC

**DRIVE PLANNING, LLC, and
RUSSELL TODD BURKHALTER,**

**Defendants,
and**

**JACQUELINE BURKHALTER,
THE BURKHALTER RANCH
CORPORATION, DRIVE
PROPERTIES, LLC, DRIVE
GULFPORT PROPERTIES LLC,
and TBR SUPPLY HOUSE, INC.,**

Relief Defendants.

/

**DECLARATION OF COURT-APPOINTED RECEIVER
KENNETH D. MURENA**

I, Kenneth D. Murena, state as follows:

1. I am over 18 years of age, am a resident of Miami-Dade County, Florida, and am competent to make this declaration upon knowledge I have gathered pursuant to my appointment and in my role as Receiver of Drive Planning, LLC

(“Drive Planning”) in the above-captioned matter pursuant to the Order Appointing Receiver [ECF No. 10] (the “Appointment Order”).

2. My attorneys and forensic accountants and I investigated the purchase and ownership of the Haye Property¹ by reviewing bank account statements, wire confirmations, public records, and a forensic reconstruction of accounts and transactions of Drive Planning to trace the funds used to purchase the Haye Property.

3. I confirmed that on January 25, 2024, a Warranty Deed was executed and recorded in the public record by the Grantors John L. Thayer and Jennifer A. Thayer, collectively transferring their respective interests in the property located in St. Petersburg, Florida (*i.e.*, the Haye Property), to Mark Paul Haye, Trustee of the Mark P. Haye Living Trust (dated March 7, 2022). *See* Warranty Deed, attached as

Exhibit 1.

4. Mark Haye was an agent/advisor of Drive Planning.

5. My review of Drive Planning’s Truist Bank statements confirmed that on January 25, 2024, \$1,400,000 was transferred from Drive Planning’s Truist account no. ending in 32951 to Upward Title & Closing Agency LLC. The details of this wire transaction are as follows:

6.

¹ Defined terms contained in this declaration have the same meaning as those in my motion for constructive trust.

| Account | Trans. Date | Type | Name | Paid to | Description/Transaction Memo |
|----------------|------------------------|-------------|--|----------------|---|
| No. 32951 | 01/25/24 | Wire | UPWARD TITLE & CLOSING AGENCY LLC | \$1,400,000.00 | File: [no. redacted] Mark P. Haye Living Trust dated March 7th, 2022 |

7. I confirmed that Upward Title & Closing Agency LLC acted as the closing agent for the transaction for the purchase and sale of the Haye Property, facilitating the transfer of the property to the Mark P. Haye Living Trust.

8. At the time the \$1.4 million was transferred from Drive Planning's Truist account no. ending in 32951 to Upward Title & Closing Agency LLC for the purchase of the Haye Property, Drive Planning's account contained millions of dollars of Drive Planning investor funds and was used by Drive Planning to receive and disburse investor funds. *See ECF No. 81.*

9. According to public records, no purchase money mortgage was used to purchase the Haye Property.

10. I determined that Drive Planning alone paid the purchase price for the Haye Property with funds that investors had deposited into Drive Planning's account for the purpose of investing in a Drive Planning investment program.

11. On January 26, 2024, Mark Haye executed a promissory note for \$1.4 million in favor of Drive Planning. The promissory note required monthly payments to Drive Planning in the amount of \$18,501.00, inclusive of principal and interest, at

an annual rate of 10%. The note's maturity date is March 1, 2034, at which time all remaining principal and interest amounts are due in full. *See Promissory Note, attached as Exhibit 2.*

12. Since the inception of the promissory note, the loan balance was reduced by a total of only \$74,004. None of that \$74,004 was personally paid or otherwise contributed by Mr. Haye or the Mark Haye Living Trust. Instead, all of the \$74,004 applied to pay down the loan balance was deducted from commissions purportedly earned by Mr. Haye as an agent/advisor for Drive Planning. These commissions were directly derived from funds misappropriated from investors. The following chart reflects the deductions from Mr. Haye's commission amounts that Drive Planning applied to pay down the balance due under the promissory note:

| Type | Trans. Date | Name | Paid to | Description/Transaction Memo |
|---------------------|-------------|--------------|--------------|--|
| Direct Deposit (DD) | 03/08/24 | Haye, Mark P | \$100,277.75 | Total Pay: \$118,778.75 less deductions: \$18,501.00 = Net pay: \$100,277.75 |
| Direct Deposit (DD) | 03/22/24 | Haye, Mark P | \$45,485.90 | Total Pay: \$63,986.90 less deductions: \$18,501.00 = Net pay: \$45,485.90 |
| Direct Deposit (DD) | 05/03/24 | Haye, Mark P | \$77,736.48 | Total Pay: \$96,237.48 less deductions: \$18,501.00 = Net pay: \$77,736.48 |
| Direct Deposit (DD) | 06/14/24 | Haye, Mark P | \$96,684.32 | Total Pay: \$115,185.32 less deductions: \$18,501.00 = Net pay: \$96,684.32 |

13. Mr. Haye received commissions from Drive Planning totaling over \$1.2 million, excluding the \$74,004 in commissions that Drive Planning used to make his

monthly payments under the note. The following chart reflects the commissions received by Mr. Haye (excluding the \$74,004 applied to the loan balance):

| <u>Commissions</u> | | | |
|---------------------------|------------------------|----------------------|-----------------------|
| Source | Trans. Date | Name of Payee | Amount Paid |
| ADP | 04/07/23 | Haye, Mark P | \$1,984.00 |
| ADP | 06/30/23 | Haye, Mark P | \$14,182.40 |
| ADP | 07/14/23 | Haye, Mark P | \$2,182.40 |
| ADP | 07/28/23 | Haye, Mark P | \$4,000.00 |
| ADP | 08/11/23 | Haye, Mark P | \$12,400.00 |
| ADP | 08/25/23 | Haye, Mark P | \$2,800.00 |
| ADP | 09/08/23 | Haye, Mark P | \$9,240.00 |
| ADP | 09/22/23 | Haye, Mark P | \$15,535.11 |
| ADP | 10/06/23 | Haye, Mark P | \$16,840.00 |
| ADP | 10/20/23 | Haye, Mark P | \$46,520.24 |
| ADP | 11/03/23 | Haye, Mark P | \$34,492.64 |
| ADP | 11/17/23 | Haye, Mark P | \$47,610.00 |
| ADP | 12/01/23 | Haye, Mark P | \$42,499.35 |
| ADP | 12/15/23 | Haye, Mark P | \$26,060.96 |
| ADP | 12/29/23 | Haye, Mark P | \$41,330.46 |
| ADP | 01/12/24 | Haye, Mark P | \$40,480.77 |
| ADP | 01/26/24 | Haye, Mark P | \$73,955.00 |
| ADP | 02/23/24 | Haye, Mark P | \$113,468.42 |
| ADP | 03/08/24 | Haye, Mark P | \$100,277.75 |
| ADP | 03/22/24 | Haye, Mark P | \$45,485.90 |
| ADP | 04/05/24 | Haye, Mark P | \$117,376.18 |
| ADP | 04/19/24 | Haye, Mark P | \$47,429.78 |
| ADP | 05/03/24 | Haye, Mark P | \$77,736.48 |
| ADP | 05/17/24 | Haye, Mark P | \$92,900.62 |
| ADP | 05/31/24 | Haye, Mark P | \$81,880.18 |
| ADP | 06/14/24 | Haye, Mark P | \$96,684.32 |
| | | Total | \$1,205,352.96 |

Under penalties of perjury, I declare that I have read the foregoing and that the facts contained therein are true and correct.

/s/ *Kenneth D. Murena*

Kenneth D. Murena

March 24, 2025